APPENDIX

APPENDIX I

OPINION OF THE SUPREME COURT OF ILLINOIS

Docket No. 40537

In re Nathan Shavin, Attorney, Respondent.

Mr. JUSTICE UNDERWOOD delivered the opinion of the court:

The sole question presented in this disciplinary proceeding is the extent of the punishment to be imposed upon respondent, Nathan Shavin, an attorney practicing in Chicago since 1926. Respondent was convicted in 1961 of knowingly filing false and fraudulent personal income tax returns for the years 1954 and 1955 in violation of section 7201 of Title 26 of the United States Code, and concurrent sentences of 18 months imprisonment were imposed on each of two counts together with fines totalling $5,000 and costs of $1,420.94. The conviction was affirmed in 1963 (*United States* v. *Shavin,* (7th cir.) 320 F.2d 308), and respondent served 12 months in the Federal penitentiary; the fines and costs were paid.

In 1964 a complaint was filed before the Committee on Grievances of the Chicago Bar Association sitting as commissioners of this court under our Rule 751. Their report recommending respondent's suspension from the practice of law for a period of two years was approved by the Board of Managers of the Association and is now before us together with respondent's exceptions thereto predicated upon his contention that the recommended discipline is excessive and that censure would be sufficient.

Respondent concedes, as he must, that the filing of false and fraudulent income tax returns is a crime involving

moral turpitude; that conviction thereof is conclusive evidence of guilt; and that such conuviction *per se* justifies disciplinary action. (*In re Sullivan,* 33 Ill. 2d 548, 553 and cases there cited; see, also, Anno., 59 A.L.R. 2d 1938.) Equally well established is our responsibility to consider the facts and circumstances in aggravation or mitigation in each case in determining the penalty to be imposed. *Sullivan; In re Revzan,* 33 Ill.2d 197; *In re Crane,* 23 Ill.2d 398.

The stipulated or admitted facts indicate respondent's practice consisted almost entirely of personal injury work for plaintiffs in which unsettled cases were referred to other lawyers for trial. Very loose bookkeeping methods prevailed, and, while the amount of unreported income for the years in question was alleged by the government to be $28,104.50 and $61,063.01, it is stipulated that there were deductible items paid out during those years which were not included in the returns. The actual amount of unreported income is claimed to be substantially less than that charged; it is as yet undetermined and the subject matter of a suit presently pending in the United States Tax Court. A number of lawyers and a judge testified that respondent's reputation for integrity and honesty was good, and it is not contended that any client was dissatisfied with the manner in which a case was handled. Respondent underwent surgery in 1966 and subsequently suffered a heart attack necessitating some hospitalization and a period of convalescence.

Also urged in mitigation is respondent's claim that settlement checks received from insurance companies approximating $30,000 during each of the questioned years were never deposited or cashed by him despite the fact that respondent's normal practice was to pay from his personal funds the amount due the client, secure the client's signature upon the release form and then present the signed release to the insurer in exchange for the settlement check

which respondent would then endorse and deposit or cash. Respondent also sometimes paid from his own funds the client's medical expenses and auto repair bills. While seemingly well-nigh incredible, it is stipulated that these settlement checks were apparently uncashed and undeposited.

In the six cases wherein we have imposed disciplinary measures upon willful violators of the Federal income tax laws, we have found censure appropriate in one instance (*In re Crane,* 23 Ill.2d 398), ordered disbarment in another (*In re Tinkoff,* No. 23356, not reported), decreed two-year suspensions from practice in two other cases (*In re Greenberg,* 21 Ill.2d 170; *In re Revzan,* 23 Ill.2d 197), and ordered three-year suspensions in the remaining two instances. (*In re Teitelbaum,* 13 Ill.2d 586; *In re Sullivan,* 33 Ill.2d 548.) The only disciplinary proceeding in which less than a two-year period of suspension has been imposed by us in these cases was *Crane* in which the Federal trial judge had suspended imposition of sentence and granted respondent probation conditioned upon payment of a fine. There, one of three questioned items of income was actually reported, the failure to report the second was claimed to be negligent oversight, and the third was assertedly due to incorrect information supplied by third persons; additionally, this court in determining the appropriate discipline, in *Crane,* considered matters which the commissioners there had erroneously thought inadmissible for that purpose. We find no comparable extenuating circumstances in this case and accordingly hold that the respondent should be suspended from the practice of law for two years, and it is so ordered.

Respondent suspended.

APPENDIX II

JUDGMENT ORDER OF THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss
Supreme Court)

AT A TERM OF THE SUPREME COURT, *begun and held in Springfield, on Monday, the thirteenth day of May in the year of our Lord, one thousand nine hundred and sixty-eight, within and for the State of Illinois.*

Present: Roy J. Solfisburg, Jr., Chief Justice
Justice Walter V. Schaefer — Justice Ray I. Klingbiel
Justice Byron O. House — Justice Robert C. Underwood
Justice Thomas E. Kluczynski — Justice Daniel P. Ward
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Clell L. Woods, Clerk

BE IT REMEMBERED, that, to-wit: on the 29th day of May, A D. 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re:	)	
No. 40537	)	Information
Nathan Shavin,	)	1352
an Attorney	)	

And now, on this day, the Court having duly considered the Report of Commissioners, and exceptions thereto, together with the briefs filed herein, and being fully advised in the premises;

IT IS HEREBY ORDERED that respondent, Nathan Shavin, be suspended from the practice of law in the State of Illinois for a period of two years.

APPENDIX III

IN THE SUPREME COURT OF ILLINOIS

In The Matter OF NATHAN SHAVIN, An Attorney

PETITION FOR REHEARING

Nathan Shavin, petitioner, respectfully represents that this Honorable Court, in rendering its judgment and opinion in the above entitled matter, on May 29, 1968, has overlooked the following:

THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS VIOLATES THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROHIBITING DOUBLE JEOPARDY

I.

FEDERAL BILL OF RIGHTS IN CRIMINAL CASES

The Fourth, Fifth, Sixth and Eighth Amendments to the Constitution of the United States guarantee procedural due process in criminal cases. The Supreme Court of the United States has established, through a long series of decisions rendered in recent years, that the protection of these Amendments is not limited to proceeding in the Federal Court only—as had been previously held—but applies also to prosecution of criminal cases in state courts, as shown by the following:

Fourth Amendment: search and seizure, *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Marcus* v. *Search Warrants*, 367 U.S. 717 (1961); *Berger* v. *New York*, 388 U.S. 41 (1967).

Fifth Amendment: self-incrimination, *Malloy* v. *Hogan*, 378 U.S. 1 (1964); *Escobedo* v. *Illinois*, 378 U.S. 478 (1964); *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

Sixth Amendment: assistance of counsel, *Gideon* v. *Wainwright,* 372 U.S. 355 (1963); *Douglas* v. *California,* 372 U.S. 353 (1963); *Ecobedo* v. *Illinois,* 378 U.S. 478 (1964); *Miranda* v. *Arizona,* 384 U.S. 436 (1966); *Swenson* v. *Bosler,* 386 U.S. 258 (1967); *Anders* v. *California,* 386 U.S. 738 (1967); *Entsminger* v. *Iowa,* 386 U.S. 748 (1967); *Gilbert* v. *California,* 388 U.S. 263 (1967); *Milani* v. *Illinois,* 386 U.S. 12 (1967); *Hemphill* v. *Illinois,* 388 U.S. 465 (1967); *Mempa* v. *Rhay,* 389 U.S. 128 (1967); speedy trial, *Klopfer* v. *North Carolina,* 385 U.S. 213 (1967); compulsory process for obtaining witnesses, *Washington* v. *Texas,* 388 U.S. 14 (1967); confrontation with witnesses, *Pointer* v. *Texas,* 380 U.S. 400 (1965); *Douglas* v. *Alabama,* 380 U.S. 415 (1965); *Smith* v. *Illinois,* 390 U.S. 129 (1968); *Barber* v. *Page,* 20 L. Ed. 2d 255 (1968); trial by jury in criminal cases which do not fall within the category of "petty" offenses, *Duncan* v. *Louisiana,* 20 L. Ed. 2d 491 (1968); *Bloom* v. *Illinois,* 20 L. Ed. 2d 522 (1968); *Dyke* v. *Taylor Implement Co.,* 20 L. Ed. 2d 538 (1968).

Eighth Amendment: cruel and unusual punishment, *Robinson* v. *California,* 370 U.S. 660 (1962).

Recently, the Supreme Court of the United States rendered a number of important decisions which must awaken the legal profession to the realization that the difference between "civil" and "criminal" cannot rest on arbitrary labeling by courts and legislatures, but requires careful examination of legal consequences to distinguish reality from fiction. The Supreme Court of the United States made it clear that a "State cannot foreclose the exercise of constitutional rights by mere labels." *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 429 (1963).

II.

PROCEEDINGS FORMERLY "CIVIL" ARE NOW "CRIMINAL"

1. *Juvenile Delinquency*

A proceeding against a juvenile delinquent was held by the Arizona state court to be "civil." But, in the case of *In re Gault,* 387 U.S. 1 (1967), the Supreme Court of the United States reversed the Arizona decision and held that it was a "criminal case" protected by the Federal Constitution. The Court pointed out that "proceedings to determine 'delinquency', which may lead to commitment to a state institution must be regarded as 'criminal' for purposes of the" federal constitutional guarantees (387 U.S. at 49). The Court accented that "commitment is a deprivation of liberty. It is incarceration against one's will." (387 U.S. at 50).[1]

In the case of *In re Urbasek,* 38 Ill. 2d 535 (1967), the Supreme Court of Illinois followed *In re Gault* and held that a delinquency proceeding and the Juvenile Division of an Illinois Circuit Court is a criminal proceeding and the juvenile had to be proven guilty, as in other criminal cases, beyond a reasonable doubt, and the preponderance of evidence rule in civil cases did not apply.

---

[1] In the case of *In re Whittington,* 20 L.Ed. 2d 625 (1968), the Supreme Court said at page 628-29: "In *Gault,* this Court held squarely, for the first time, that various of the federal constitutional guarantees accompanying ordinary criminal proceedings were applicable to state juvenile court proceedings where possible commitment to a state institution was involved. * * * The judgment is vacated and the case is remanded to the Ohio Court of Appeals of Fairfield County for consideration in light of *In re Gault,* 387 U.S. 1, 18 L.Ed. 2d 527, 87 S.Ct. 1428 (1967)."

In the case of *In re Marsh,* 237 N.E.2d 529, decided on May 29, 1968, the Supreme Court of Illinois held the Fourth Amendment protection against illegal search and seizure applicable to proceedings under the Illinois Juvenile Court Act.

In the cases of *In re Boykin,* 237 N.E.2d 460, and *In re Marsh,* 237 N.E.2d 529, both decided on May 29, 1968, the Supreme Court of Illinois held that indigent juveniles who were found to be delinquent were entitled to free transcripts for appeal. On the same day, the Supreme Court of Illinois adopted Rule 661 providing for appointment of appellate counsel and free transcripts for indigent juvenile delinquents on whose behalf appeals are prosecuted.

2. *Sex Offenses*

A proceeding under the Colorado Sex Offenders Act was treated by the Colorado State Court as a "civil" proceeding, the same as the Illinois statute treated a proceeding under the Sexually Dangerous Persons Act (Ill. Rev. Stat., 1967, ch. 38, §105.3.01 and ch. 108 §112).

In *Specht* v. *Patterson,* 386 U.S. 605 (1967), the Supreme Court of the United States reversed the Supreme Court of Colorado and held that a proceeding against a person with sexually aggressive tendencies is a "criminal case" protected by the Federal Constitution, as the deprivation of liberty by confinement "is criminal punishment even though it is to keep individuals from inflicting future harm". (386 U.S. at 608-609.)

The Appellate Court of Illinois, in *People* v. *Potter,* 86 Ill. App. 2d 151 (1967), cited and followed *Specht* v. *Patterson.*

The Illinois Sexually dangerous Persons Act (Ill. Rev. Stat., 1967, Ch. 38, §105-3.01) provides: "The proceedings under this Act shall be civil in nature. The provisions of the civil practice Act including the provisions for appeal and all existing and future amendments of said Act and modifications thereof and the rules now or hereafter adopted pursuant to said Act shall apply to all proceedings hereunder except as otherwise provided in this Act." In *People* v. *Capoldi,* 37 Ill. 2d 11 (1967), the Supreme Court of Illinois said: "We have held in proceedings under the Sexually Dangerous Persons Act that *a defendant must be accorded the same procedural safeguards available to an accused in a criminal trial* even though the proceedings are civil in nature." (37 Ill. 2d at 15). (Emphasis supplied)

3. *Revocation of Probation*

Prior to 1967, a proceeding for the revocation of probation was held to be "civil".[2] In *Mempa* v. *Rhay,* 389 U.S. 128, decided on November 13, 1967, the Supreme Court of the United States held that, in a proceeding to revoke probation, the defendant has a right to assistance of counsel under the Sixth Amendment to the Constitution of the United States. Thus, the Supreme Court determined that revocation of probation is a "criminal", not a "civil", proceeding.

In *People* v. *Coffman,* 83 Ill. App. 2d 272, decided on June 1, 1967, the Appellate Court of Illinois reversed the judgment of the trial court on the basis of lack of due process because the defendant was not represented by counsel in a proceeding for the revocation of probation.

---

[2] See Fins, "Illinois Court Practice Under The New Judicial Article" (1967 edition) at pages 163-164.

In this sphere, the Supreme Court of the United States (which reviewed a case from the State of Washington) and the Appellate Court of Illinois reached their respective conclusions independent of each other, but the result is the same.

4. *Forfeiture Proceeding*

Prior to 1965, a proceeding for the forfeiture, destruction, disposition or recovery of property seized or confiscated as contraband was considered by the Illinois courts as "civil".[3]

In *Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693 (1965), the Supreme Court of the United States held that the Federal constitutional guarantee against unreasonable searches and seizures applied to States forfeiture proceedings (380 U.S. at 696). The Supreme Court reversed a Pennsylvania decision "in a forfeiture proceeding which the Pensylvania court deemed civil in nature" (380 U.S. at 695). The Supreme Court held that "proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal." (380 U.S. at 697). "Its object, like a criminal proceeding, is to penalize for the commission of an offense against the law" (380 U.S. at 700). "In this forfeiture proceeding he was subject to the loss of his automobile, which at the time involved had an estimated value of approximately $1000, a higher amount than the maximum fine in the criminal proceeding. It would be anomalous indeed, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible.

---

[3] Ibid. at pages 160-161.

That the forfeiture is clearly a penalty for the criminal offense and can result in even greater punishment than the criminal prosecution has in fact been recognized by the Pennsylvania courts" (380 U.S. at 701).

5. *Municipal Ordinance Violation*

The Supreme Court of the United States held that, as a matter of Federal constitutional law, a prosecution under a municipal ordinance is a "*criminal*" case, as follows:

A. In *Camera* v. *Municipal Court of the City and County of San Francisco,* 387 U.S. 523, decided June 5, 1967, the Supreme Court of the United States held that enforcement of a municipal ordinance which may result in the imposition of a fine or imprisonment is a criminal case protected by the Federal Constitution as such. The Supreme Court of the United States overruled its earlier decisions and the California Court of Appeals which held that a city ordinance "is part of a regulatory scheme which is essentially civil rather than criminal" (387 U.S. at 528). The Supreme Court of the United States, on the contrary, said (387 U.S. at 540): "In this case, the appellant [defendant below] has been charged with a crime." The Supreme Court of the United States referred to the proceeding as one "enforced by criminal processes", by a "criminal complaint", constitutes "a criminal offense" and is "a crime, punishable by fine or even by jail sentence" (387 U.S. at 531).

B. In *See* v. *City of Seattle,* 387 U.S. 541, also decided by the Supreme Court of the United States on June 5, 1967, the defendant was fined $100.00 for the violation of a city ordinance and the fine was suspendeed (387 U.S. at 542). The Supreme Court of the United States reversed the conviction and, following the above-discussed *Camara*

case, held that it was a criminal case protected by the Federal Constitution as such.[4]

In *Village of Park Forest* v. *Bragg*, 38 Ill. 2d 225 (1967), *amici curiae* urged the Supreme Court of Illinois to follow the above discussed *Camara* and *See* cases, but the Supreme Court of Illinois neither followed nor cited these decisions of the Supreme Court of the United States and persisted in relying upon earlier Illinois decisions of the pre-*Camara* and *See* period, holding that a prosecution for the violation of a municipal ordinance was a "civil" case.

6. *Disciplinary Proceeding*

In *Spevack* v. *Klein*, 385 U.S. 511 (1967), a request was made that Spevack, a New York lawyer, produce his records in a disciplinary proceeding. Spevack refused to comply with this request, contending that if he produced his records, the evidence might show that he was involved in soliciting which would result in the deprivation of his right to earn a livelihood through the practice of law. In *Spevack* v. *Klein*, the Supreme Court of the United States held that depriving a lawyer of the right to practice law constitutes a "penalty" (385 U.S. at 514-515) and is, therefore, protected by the Fifth Amendment to the Constitution of the United States which provides: "No person . . . shall be compelled *in any criminal case* to be a witness against himself." To so hold, the Supreme Court of the United States had to reach the conclusion that a

---

[4] In *Avery* v. *Midland County*, 20 L.Ed. 2d 45 (1968), the Supreme Court of the United States said: "[I]t is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment (citing in the footnote, among other cases, *See* v. *City of Seattle*, 387 U.S. 541). The actions of local government *are* the actions of the State". (20 L.Ed. at 51)

disciplinary proceeding, which may result in the penalty of revocation of a license to practice a trade or profession, is a "criminal case", for otherwise there would be no occasion to apply the Fifth Amendment prohibiting self-incrimination in "*any criminal case*".[5] It is, therefore, clear that the holding of *Spevack* v. *Klein* is that a disciplinary proceeding is a "criminal case".

Since the decision of *Spevack* v. *Klein,* the Supreme Court of the United States has set aside other judgments in disciplinary proceedings, as follows:

A. In the case of *In Re Kaye,* 266 N.Y.S. 2d 69, the New York Court disbarred Louis Kaye, effective February 14, 1966. The New York Court, citing an earlier case, said at page 70:

> "Disciplinary proceedings are not criminal proceedings, and the 'refusal to testify raises the legal presumption of the truth of these facts, which must have been known to defendant, and which he failed to contradict.' "

The Supreme Court of the United States did not agree with this position and vacated the disbarment judgment against Louis Kaye and remanded the case to the New York Court

---

[5] It must not be overlooked that the constitutional privilege against self-incrimination may come into play in criminal cases, civil cases, administrative hearings, congressional investigations, and proceedings of all kinds, because a self-incriminating statement which is made in a civil case or in any other proceeding may result in the disclosure of evidence either supporting criminal prosecution or leading to evidence which would support criminal prosecution of the person who makes the statement, thereby resulting in self-incrimination. In the *Spevack* case, the only ill effect on the lawyer would have been that his statement would lead to disbarment, which "is a punishment or penalty imposed on the lawyer" (*In re Ruffalo,* 20 L.Ed. 2d 117, 122) and therefore "criminal" in effect.

for reconsideration in light of *Spevack* v. *Klein*. *Kaye* v. *Co-ordinating Committee on Discipline of Association of Bar of City of New York*, 386 U.S. 17 (1967).

B. In the case of *In re Zuckerman*, 259 N.Y.S. 2d 963, the New York Court disbarred Landon Zuckerman, effective 30 days from March 3, 1965, because the respondent was guilty of the submission of misleading, exaggerated and false medical bills and statements covering lost time and earnings for insurance purposes, building up medical bills by referring claimants to a succession of doctors and using investigators to obtain signed retainers, to obtain statements from parties represented by attorneys and to obtain signatures on blank forms for appointment of guardians ad litem. However, the New York Court also took into consideration the fact that "respondent, Zuckerman, deliberately refused to cooperate with the court in its efforts to expose unethical practices and to determine whether he had committed any acts of professional misconduct which destroyed the character and fitness required of him as a condition to his retention of the privilege of remaining a member of the Bar." (259 N.Y.S. 2d at 964). The Supreme Court of the United States vacated the disbarment judgment and remanded the case to the New York Court for reconsideration in light of *Spevack* v. *Klein*. *Zuckerman* v. *Greason*, 386 U.S. 15, and rehearing denied. *Zuckerman* v. *Greason*, 386 U.S. 969 (1967).

In the case of *In re Damisch*, 38 Ill. 2d 195 (1967), the Supreme Court of Illinois followed *Spevack* v. *Klein* in holding that a disciplinary proceeding involved "punishment" (38 Ill. 2d at 206), but persisted in relying upon earlier Illinois decisions of the pre-*Spevack* period in holding that "a disciplinary proceeding is not a criminal prosecution and is not subject to all the rules that govern such

a case. E.g., *In re Anderson,* 370 Ill. 515, 522; *In re Needham,* 364 Ill. 65, 68" (38 Ill. 2d at 206). *The Anderson* case was decided in 1939 and the *Needham* case in 1936, more than a quarter of a century before the decision in *Spevack* v. *Klein.*[6]

In re Ruffalo, 20 L.Ed. 2d 117 (1968), the Supreme Court of the United States said:

> **"Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. * * * These are adversary proceedings of a quasi-criminal nature."** (20 L.Ed 2d at 122)

III.

DOUBLE JEOPARDY

In its opinion, the Supreme Court of Illinois has stated the facts in the case at bar as follows:

> "The sole question presented in this disciplinary proceeding is the extent of the punishment to be imposed upon respondent, *Nathan Shavin, an attorney practicing in Chicago since 1926.* Respondent was convicted in 1961 of knowingly filing false and fraudulent personal income tax returns for the years 1954 and 1955 in violation of section 7201 of Title 26 of the

---

[6] The *Damisch* case was not and (in the opinion of the writer) could not be reviewed by the Supreme Court of the United States, as the Supreme Court of Illinois said: "We conclude that the appropriate disciplinary measure in this instance is censure, and it is so ordered" (38 Ill. 2d at 209). An order of censure is merely an expression of the court's "displeasure" with the respondent's conduct, but it does not deprive the respondent of liberty, property, or the right to earn a livelihood in his chosen profession. It is, therefore, not a "judgment" which is reviewable by the Supreme Court of the United States. (Research has not disclosed a case directly in point).

United States Code, and concurrent sentences of 18 months imprisonment were imposed on each of two counts together with fines totalling $5,000 and costs of $1,420.94. The conviction was affirmed in 1963 (*United States* v. *Shavin*, (7th Cir.) 320 F. 2d 308), and respondent served 12 months in the Federal penitentiary; the fines and costs were paid.

* * *

"The stipulated or admitted facts indicate respondent's practice consisted almost entirely of personal injury work for plaintiffs in which unsettled cases were referred to other lawyers for trial. *Very loose bookkeeping methods prevailed, and* while the amount of unreported income for the years in question was alleged by the government to be $28,104.50 and $61,063.01, *it is stipulated that there were deductible items paid out during those years which were not included in the returns. The actual amount of unreported income is claimed to be substantially less than that charged; it is as yet undetermined and the subject matter of a suit presently pending in the United States Tax Court. A number of lawyers and a judge testified that respondent's reputation for integrity and honesty was good, and it is not contended that any client was dissatisfied with the manner in which a case was handled.* Respondent underwent surgery in 1966 and subsequently suffered a heart attack necessitating some hospitalization and a period of convalescence.

"Also urged in mitigation is respondent's claim that *settlement checks received from insurance companies approximating $30,000 during each of the questioned years were never deposited or cashed by him despite the fact that respondent's normal practice was to pay from his personal funds the amount due the client, secure the client's signature upon the release form and then present the signed release to the insurer in exchange for the settlement check which respondent would then endorse and deposit or cash. Respondent* also sometimes paid from his own funds the client's

medical expenses and auto repair bills. While seemingly well-nigh incredible, *it is stipulated that these settlement checks were apparently uncashed and undeposited.*" (Emphasis supplied.)

Prior to 1967, it was common practice to proceed with disciplinary proceedings against lawyers who had been criminally convicted for income tax evasion. These proceedings resulted in most cases in a suspension from the practice of law for several years.[7] Since disciplinary proceedings were, prior to 1967, considered "civil," there was no "double jeopardy" involved. But now that *Spevack* v. *Klein*, 385 U.S. 511 (1967), has determined that depriving a person of a license which is the means of earning a livelihood constitutes the imposition of a "penalty," the disciplinary proceeding resulting in a suspension involves additional punishment (that is, a second "penalty") for the same tax evasion for which the defendant has already paid a penalty in the criminal conviction. This constitutes "double jeopardy" prohibited by the Fifth Amendment to the Constitution of the United States.

Formerly, it was held that where the same act constitutes a violation of State and Federal law, two prosecutions may be had without violating the double jeopardy principal (21 Am. Jur. 2d, Criminal Law § 192). Now that the "double jeopardy" prohibition of the Fifth Amendment is applicable to State as well as to Federal prosecutions, double punishment for the same act is abhorrent to the constitutional protection. Furthermore, the former distinction, which was based on the source of

---

[7] See *In re Teitlebaum*, 13 Ill. 2d 586 (1958), three year suspension; *In re Greenberg*, 21 Ill. 2d 170 (1961), two yeear suspension; *In re Revzan*, 33 Ill. 2d 197 (1965), two year suspension; *In re Sullivan*, 33 Ill. 2d 548 (1965), three year suspension.

the law involved, is a play on semantics, grossly unrealistic and violates the true spirit of due procees of law. A sovereign should not be allowed to "foreclose the exercise of constitutional rights by mere labels" (*N.A.A.C.P.* v. *Button,* 371 U.S. 415, 429 (1963).

It is of interest to note that in disciplinary proceedings based on a federal conviction, the respondent is not allowed to contradict the purported facts upon which the federal conviction is based, as "The record of conviction of respondent is conclusive of his guilt and it has been established in this State that he cannot go behind such record." *In re Teitelbaum,* 13 Ill. 2d 586, 590 (1965). In the disciplinary proceeding, the respondent is limited to the introduction of "facts and circumstances in aggravation or mitigation of each case in an effort to determine an appropriate penalty." *In re Sullivan,* 33 Ill. 2d 548, 554 (1966). In the opinion in the case at bar, the Supreme Court of Illinois stresses the proposition that the federal income tax "conviction" is "conclusive evidence of guilt; and that such conviction *per se* justifies disciplinary action" and that the court is limited "to consider the facts and circumstances in aggravation or mitigation in each case in determining the penalty to be imposed." Thus, the accused lawyer is deprived of an opportunity to prove himself not guilty in the State proceeding, but is nevertheless subjected to a second "punishment" (See *In re Ruffalo,* 20 L.Ed 2d 117, 122 (1968), quoted from page 11, *ante*).

In 1963-1964, Nathan Shavin was, in a very realistic sense, suspended from the practice of law for one year (while he was incarcerated in the Federal penitentiary) for something which he had purportedly done in 1954-1955—nine or ten years previously. In 1968 he is ordered

by the Supreme Court of Illinois to be suspended again from the practice of law for two years for the same offense which he had purportedly committed in 1954-1955—thirteen years previously. If the lapse of time is intended as a "cure," the time has long passed. If it is intended as a second punishment for the same act, it constitutes double jeopardy and violates the true spirit of due process of law.

As shown above, the judgment of the Supreme Court of Illinois violates the Fifth Amendment to the Constitution of the United States prohibiting double jeopardy.

Article VI of the Constitution of the United States provides: "This Constitution, and the Laws of the United States * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution of Laws of any State to the Contrary notwithstanding."

Wherefore, respondent prays that a rehearing be granted and that the respondent be discharged.

Respectfully submitted,

WILLIAM T. KIRBY,
JAMES T. GREEN
Attorneys for Petitioner

GEORGE D. CROWLEY
Of Counsel

APPENDIX IV

ORDER OF SUPREME COURT OF ILLINOIS DENYING PETITION FOR REHEARING

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss
Supreme Court)

AT A TERM OF THE SUPREME COURT, *begun and held in Springfield, on Monday, the ninth day of September in the year of our Lord, one thousand nine hundred and sixty-eight, within and for the State of Illinois.*

Present: Roy J. Solfisburg, Jr., Chief Justice
Justice Walter V. Schaefer — Justice Ray I. Klingbiel
Justice Byron O. House — Justice Robert C. Underwood
Justice Thomas E. Kluczynski — Justice Daniel P. Ward
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Clell L. Woods, Clerk

BE IT REMEMBERED, that, to-wit: on the 24th day of September, A.D. 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re:	)	
No. 40537	)	
Nathan Shavin,	)	Information
An Attorney	)	

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.